

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEITH L. CARNES,

Defendant.

Case No. 16-00301-01-CR-W-DGK

**MOTION TO AMEND BY INTERLINEATION**

The United States of America, by and through its undersigned counsel, moves this Court to amend by interlineation the Superseding Indictment (Doc. 48) to alter the serial number of the firearm charged in Count One of the Superseding Indictment.

**I. INTRODUCTION**

On May 22, 2019, a three count Superseding Indictment (Doc. 48) was filed against Defendant Keith L. Carnes (“Carnes”). Count Three alleges Carnes was drug user in possession of a firearm, specifically “a Glock, Model 21, .45 caliber pistol, Serial Number TES655” (“Glock 21”). (Doc. 48.)

In preparing for trial and reviewing exhibits, the United States learned the serial number for the Glock 21 is not TES665, but rather is TES655, as written on the Superseding Indictment. The serial number for the Glock 21, therefore, is incorrect by one digit in the Superseding Indictment. Thus, the United States files this motion to amend through interlineation the Superseding Indictment to reflect the correct serial number.

## II. ARGUMENT & AUTHORITIES

“Although the general rule is that a court may not amend an indictment, that rule is inapplicable when the change is one of form only.” *United States v. Mason*, 869 F.2d 414, 417 (8th Cir. 1989). Correction of a typographical error which goes to the form rather than the substance of the indictment is permissible. *United States v. Powers*, 572 F.2d 146, 152 (8th Cir. 1978) (citation omitted). Both the United States Court of Appeals for the Eighth Circuit and this Court hold that the Court may amend an indictment to correct an incorrect serial number on a firearm in an indictment without resubmission to the grand jury because the “the change of a weapon’s serial number” is merely the “[c]orrection of a typographical error which goes to the form rather than the substance of the indictment[.]” *United States v. Neff*, 525 F.2d 361, 363 (8th Cir. 1975); *see also Scroggins v. United States*, No. 4:12-CV-01448-DGK, 2013 WL 6579658, at \*4 (W.D. Mo. Dec. 13, 2013) (“Amending an indictment to correct a typographical error concerning a weapon’s serial number does not require dismissal of the indictment because the change goes to the form rather than the substance of the indictment.”). The United States need not prove that Carnes possessed a “specific type of firearm,” *United States v. McIntosh*, 23 F.3d 1454, 1457 (8th Cir. 1994), just that he possessed “any firearm,” 18 U.S.C. § 922(g).

Here, the alteration of the Glock 21’s serial number by one digit in the Superseding Indictment is one of form, not substance. This Court is permitted to make such an amendment. Thus, this Court can and should direct amendment of the Superseding Indictment to correct a typographical error in the Glock 21’s serial number.

Next, “a finding of prejudice to the defendant must be present before an amendment is held impermissible.” *United States v. Mason*, 869 F.2d 414, 417 (8th Cir. 1989) (internal citation and quotation marks omitted). Carnes cannot reasonably contend he would be prejudiced by fixing

this scrivener's error. Defendant is and has been on notice of exactly what firearm forms the basis for Count One and has pictures of the firearm's serial number in discovery. The serial number, again, is not an element of the offense and the Government does not see how a valid legal defense could be formed around an incorrect serial number in an indictment. It has no prejudicial effect on Carnes and this Court should direct the amendment.

### **III. CONCLUSION**

WHEREFORE the United States respectfully requests the Court grant the Motion and direct the Clerk of Court to ensure the Superseding Indictment contains the correct serial number of TES655 for the Glock 21.

Respectfully submitted,  
Timothy A. Garrison  
United States Attorney

By /s/ William A. Alford III

William A. Alford III  
Assistant United States Attorney  
Violent Crime & Drug Trafficking Unit  
Charles Evans Whittaker Courthouse  
400 East Ninth Street, Room 5510  
Kansas City, Missouri 64106  
Telephone: (816) 426-3122

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was delivered on October 23, 2019, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

/s/ William A. Alford III

William A. Alford III

Assistant United States Attorney